

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRENT BURCHAM
Claimant

TREGO/DUGAN AVIATION OF GRAND ISL
Employer

APPEAL 21A-UI-00039-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/17/20
Claimant: Appellant (2)

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 12, 2020 (reference 05) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 2, 2021, at 10:00 a.m. The claimant participated. The employer participated through Human Resources Manager Chelsie Krab. Official notice was taken of the administrative records.

ISSUES:

1. Whether claimant is totally, partially or temporarily unemployed?
2. Whether claimant is still employed at the same hours and wages?
3. Whether claimant is able to and available for work?
4. Whether employer's account is subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Brent Burcham, began employment with Trego / Dugan Aviation of Grand Island as a full time customer service agent on May 13, 2014. The claimant's regular full-time schedule is an average of 40 hours per week. The claimant's hourly wage is \$17.50. The claimant's weekly benefit amount is \$481.00.

The claimant did not work for any other employers during his base period or during the period he filed weekly claims. The claimant worked all hours assigned to him by the employer for the period from the week ending August 29, 2020 to the week ending September 19, 2020. The claimant was able and available for work for those weeks.

The claimant received \$420.00 gross in hourly wages for the week ending August 29, 2020.

The claimant received \$368.00 gross in hourly wages for the week ending September 5, 2020.

The claimant received \$355.00 gross in hourly wages for the week ending September 12, 2020.

The claimant received \$445.00 gross in hourly wages for the week ending September 19, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was partially employed from the week ending August 29, 2020 to the week ending September 19, 2020. The claimant was able and available effective August 29, 2020.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. R. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis difference from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.


To be partially unemployed for any given week, claimant must work less than 36 hours per week (claimant's regular full-time schedule) and earn less than \$496.00 (claimant's weekly benefit plus \$15.00).

The claimant earned less than \$496.00 and worked less than 40 hours per week for each week from the August 29, 2020 to the week ending September 19, 2020. He is partially unemployed for this period. The claimant is also not working the same hours and wages as his contract for hire. He is also able and available for this period because the reduction in his hours was not

attributable his lack of availability. The employer is subject to charge because it is the only employer in the claimant's base period. Benefits are granted.

DECISION:

The November 12, 2020 (reference 05) unemployment insurance decision is reversed. The claimant was partially unemployed and able and available effective August 23, 2020. Benefits are granted.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read "Sean M. Nelson".

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

February 22, 2021
Decision Dated and Mailed

smn/ol